

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6337 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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POPATLAL HARGOVINDDAS PATEL

Versus

COMPETENT AUTHORITY AND ADDITIONAL COLLECTOR

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Appearance:

MR DF AMIN for Petitioners

MR TH SOMPURA, AGP for Respondent No. 1, 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/12/96

ORAL JUDGEMENT

Rule returnable to day. Learned Assistant Government Pleader Mr. T.H.Sompura appears and waives service of rule on behalf of the respondents. On the facts and in the circumstances of the case, the matter is taken up for final hearing to day.

2. Petitioners are the owners of the land bearing City Survey No. 421, 422, 423,425,429 i.e. final plots

nos. 18 and 59 situated at Odhav admeasuring in all 99121 sq.mtrs. Under the order dated 19th April, 1991, said lands were exempted under section 21 (1) of the Urban Land [Ceiling & Regulation] Act, 1976 [hereinafter referred to as "the Act"] on the terms and conditions mentioned in the order.

3. The construction made by the petitioner was found to be in breach of the said terms and conditions and due Show Cause Notice was issued to the petitioners under section 21(2) of the Act. At the hearing of the said notice, the petitioners did not remain present and the competent authority having noticed breach of several conditions of sanction, withdrew the exemption granted under section 21(1) of the Act. Feeling aggrieved, the petitioners preferred appeal before the Tribunal. The petitioners did not remain present before the Tribunal and the Tribunal also rejected the appeal.

4. Feeling aggrieved, the petitioners have preferred this petition before this Court. Learned advocate Mr. Amin has contended that the petitioners have made construction in consonance with the sanction granted by the competent authority. He, however, states that the petitioners be given an opportunity to establish their case before the Tribunal. Learned Asstt. GP Mr. Sompura has opposed the proposition made by Mr. Amin and has contended that enough opportunities were granted to the petitioners to defend their case. However, the petitioners have failed to do so. Be it noted that the construction has been completed and most of the dwelling units have been allotted to the occupiers who have already occupied the said dwelling units. In the circumstances, I consider it fit to remand the matter to the competent authority for proper adjudication considering the defence that may be raised by the petitioners before the competent authority under the Act.

5. The impugned order made by the Competent Authority on 16th May, 1995 annexure "H" to the petition and the order made by the Tribunal on 13th May, 1996 annexure "I" to the petition are hereby quashed and set aside. The matter is remanded to the Competent Authority under the Act for fresh adjudication in accordance with law after considering the evidence that may be produced by the petitioners. The petitioners are directed to place all the evidence and their written submissions before the Competent Authority within one month from today. The petitioners shall appear before the Competent Authority as and when they are called upon and the Competent Authority shall decide the matter in accordance

with law after affording opportunity of hearing to the petitioners. The petitioners shall pay costs of this petition to the respondents. The costs is quantified at Rs.7,500/- [Rupees seven thousand five hundred only]. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

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